

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JAMES EDWARD VERNER,)	
)	
Petitioner,)	
v.)	Civil Action No. 10-3384-CV-S-DW-H
)	
JUAN CASTILLO, Warden,)	
United States Medical Center,)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636 (b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed written exceptions to the report and recommendation of the Magistrate in which he continues to challenge his housing in administrative segregation. He specifically contends that respondent is not conducting meaningful reviews of his security status because his serious medical condition is not being taken into consideration. He asserts that his pulmonary hypertension has progressed to a point that he is not physically able to pose a risk to other inmates

or staff.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed because petitioner has failed to state a constitutional violation. Clearly, based on petitioner's serious violent history, including violence in prison, the Medical Center has acted within its discretion in assigning him to administrative segregation for the safety and security of the institution. It should be noted, moreover, that petitioner is housed at the Medical Center to effectively treat his serious medical condition, and he does not complain about that care. There is nothing in the record to indicate that the due process review process is conducted in violation of petitioner's rights. The Court agrees with the Magistrate's conclusion that petitioner has failed to assert a claim that rises to the level of a due process violation.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Dean Whipple
DEAN WHIPPLE
UNITED STATES DISTRICT JUDGE

Date: September 8, 2011